

SENATE BILL 741

By Tate

AN ACT to amend Tennessee Code Annotated, Title 26;
Title 45; Title 47; Title 55; Title 56; Title 62,
Chapter 11 and Title 66, relative to collateral
recovery.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Collateral Recovery Act".

SECTION 2. The general assembly finds that collateral recovery practices affect public health, safety, and welfare and declares that the purpose of this act is to regulate individuals and entities engaged in the business of collateral recovery for the protection of the public.

SECTION 3. Tennessee Code Annotated, Title 55, is amended by adding sections 4 through 38 of this act as a new chapter.

SECTION 4. As used in this chapter, unless the context otherwise requires:

(1) "Assignment" means a written authorization by a legal owner, lien holder, lessor, lessee, or licensed repossession agency authorized by a legal owner, lien holder, lessor or lessee to locate or repossess, involuntarily or voluntarily, any collateral, including, but not limited to, collateral registered under this title that is subject to a security agreement that contains a repossession clause or is the subject of a rental or lease agreement. "Assignment" also means a written authorization by an employer to recover any collateral entrusted to an employee or former employee if the possessor is wrongfully in the possession of the collateral. A photocopy, facsimile copy, or electronic copy of an assignment shall have the same force and effect as an original written assignment;

(2) "Branch office" means each additional office and secured storage facility location of a repossession agency located in and conducting business within the state of

Tennessee and operating under the same name as the repossession agency where business is actively conducted or is engaged in the business authorized by the licensure;

(3) "Collateral" means any vehicle, boat, recreational vehicle, motor home, motorcycle, or other property that is subject to a security, lease, or rental agreement;

(4) "Department" means the department of commerce and insurance;

(5) "Debtor" means any person or entity obligated under a lease, rental, or security agreement;

(6) "Financial institution" means a bank, industrial loan and thrift company, savings bank, savings and loan association, or credit union organized and operating under the laws of this or any other state or of the United States, and any subsidiary or affiliate of any such bank, industrial loan and thrift company, savings bank, savings and loan association, or credit union organized and operating under the laws of this or any other state or of the United States;

(7) "Legal owner" means a person holding:

(A) A security interest in any collateral that is subject to a security agreement;

(B) A lien against any collateral; or

(C) An interest in any collateral that is subject to a lease or rental agreement;

(8) "Licensure" means the approval of the required criteria that has been submitted for review in accordance with this chapter;

(9) "Personal effects" means any property contained within or on collateral that has been repossessed, or property that is not permanently affixed to the collateral, that is not the property of the legal owner;

(10) "Recovery permit" means a permit issued by the department to a repossession agency employee who has met all the requirements under this chapter;

(11) "Remote storage location" means a secured storage facility of a licensed repossession agency designated for the storage of collateral that is a secure building or

has a perimeter that is secured with a fencing construction that makes the area not accessible to the public.

(12)

(A) "Repossession agency" means any person or entity conducting business within the state of Tennessee, that, for any type of consideration, engages in the business of, accepts employment to furnish, or agrees to provide or provides property locating services, property recovery, recovered property transportation, recovered property storage, or all services relevant to any of the following:

(i) The location, disposition, or recovery of property as authorized by the self-help provisions of the Uniform Commercial Code, compiled in title 47;

(ii) The location, disposition, or recovery of lost or stolen property;

(iii) The securing of evidence concerning repossession and recovery to be used before any court, board, office, or investigating committee;

(iv) Inventory of property contained in or on the collateral or recovered property;

(v) The possession of collateral; and

(vi) The prevention of the misappropriation or concealment of chattel, vehicles, goods, objects, documents, or papers;

(B) "Repossession agency" does not include any of the following:

(i) An attorney at law who is performing his or her duties as an attorney at law;

(ii) The legal owner of collateral that is subject to a security agreement;

(iii) An officer or employee of the United States of America or of this state or a political subdivision of this state while the officer or employee is engaged in the performance of his or her official duties;

(iv) A qualified license or recovery permit holder when performing services for, or on behalf of, a licensed repossession agency; or

(v) A collection agency licensed under the Tennessee Collection Service Act, compiled in title 62, chapter 20, when its activities are limited to assisting an owner in the recovery of property that is not collateral as defined in this chapter;

(13) "Repossession agency employee" means any person performing services for a repossession agency under a contract of hire;

(14) "Secured storage facility" means an area located on the same premises as a repossession agency office or branch office that is designated for the storage of collateral and is a secure building or has a perimeter that is secured with a fencing construction that makes the area not accessible to the public; and

(15) "Security agreement" means an obligation, pledge, mortgage, chattel mortgage, lease agreement, rental agreement, deposit, or lien, given by a debtor as security for payment or performance of his or her debt by furnishing the creditor with a recourse to be used in case of failure in the principal obligation. "Security agreement" includes a bailment where an employer-employee relationship exists or existed between the bailor and the bailee.

SECTION 5.

(a) The department shall regulate repossession agencies and their employees in accordance with this chapter, and to that end may establish reasonable requirements with respect to proper service and practices relating to repossession agencies and their employees.

(b) The department shall have the following powers:

(1) To require that all employees, agents, and other personnel used in repossession be employees, agents, or personnel of a licensed repossession agency;

(2) To adopt reasonable and proper rules covering the exercise of powers conferred upon it by this chapter, and reasonable rules governing investigations, hearings, and proceedings under this chapter;

(3) To adopt appropriate rules, pursuant to the Uniform Administrative Procedures Act, compiled at title 4, chapter 5, setting forth the standards and procedures by which it will administer and enforce this chapter;

(4) To create special procedures for the receipt and handling of consumer complaints; and

(5) To employ such persons as are needed to administer and enforce this chapter, in such capacities as they are needed, whether as hearing examiners, special examiners, enforcement officers, investigators, or otherwise.

(c) The staff of the department shall have full power and authority in the performance of their official duties to enter into or upon any place, building, or premises of any repossession agency location or branch office location at any reasonable time for the purpose of inspecting such agency operating under this chapter. The department shall not set pricing fees for repossessions, personal property storage, skip tracing, or other related services provided by repossession agencies to their clients.

SECTION 6.

(a) Upon receiving notice pursuant to section 21 of this chapter that a seizure or repossession has taken place, the law enforcement agency receiving such notice shall obtain the following information from the agency providing the notice:

(1) The date and time of the repossession;

(2) The Vehicle Identification Number (VIN), the make, the model, and the year of the vehicle or collateral repossessed;

(3) The agency name, the financial institution, and the recovery permit number; and

(4) The name and officer identification number of the local law enforcement officer notified of the repossession.

(b) Any law enforcement agency that takes information pursuant to subsection (a) shall forward such information to the department within seventy-two (72) hours of receipt of such information.

(c) Each law enforcement agency that takes information pursuant to subsection (a) shall submit a monthly invoice to each repossession agency that provided one or more notices pursuant to section 21 to such law enforcement agency during the previous calendar month. The monthly invoices shall include a fee of ten dollars (\$10.00) for each notice that the repossession agency provided to the law enforcement agency pursuant to section 21 during the previous calendar month. Each law enforcement agency that submits an invoice pursuant to this section shall retain one dollar (\$1.00) of each ten dollar (\$10.00) fee to offset the administrative costs associated with receiving the notices and forwarding information to the department. The remaining nine dollars (\$9.00) of each fee shall be forwarded to the state treasurer for deposit into the collateral recovery administrative fund, created by section 23 of this chapter. A repossession

agency shall pay an invoice that is submitted pursuant this section within thirty (30) days of receipt.

(d) The information required to be provided to law enforcement in subdivisions (a)(1) through (4) must be reduced to writing by the repossession agency and placed with the vehicle or collateral at the time of repossession and must accompany the vehicle or collateral until it has been liquidated or returned to the legal owner or debtor. A copy of such information must be kept for the repossession agency's permanent file for a period of two (2) years following the date of repossession.

SECTION 7.

(a) It is an offense for any person or entity to repossess a vehicle or collateral in this state, attempt to repossess a vehicle or collateral in this state, or to hold himself, herself, or itself out to be a repossession agency unless licensed under this chapter.

(b) It is an offense for any person to repossess a vehicle or collateral in this state, attempt to repossess a vehicle or collateral in this state, or hold himself or herself out to be a repossession agency employee unless he or she holds a valid recovery permit issued by the department under this chapter.

(c) This chapter does not apply to a financial institution or the employee of a financial institution when engaged in an activity otherwise covered by this chapter if the activity is conducted by the employee on behalf of that financial institution.

SECTION 8.

(a) Application for original licensure as a repossession agency shall be made to the department in writing on forms prescribed by the department and shall be accompanied by the appropriate documentation and a nonrefundable application fee.

(b) Every application shall state, in addition to any other information that is required by the department the:

- (1) Name of the applicant;
- (2) Name under which the applicant shall do business;
- (3) Proposed location of the agency by number, street, and city;
- (4) Proposed location of the agency's remote storage location or locations by number, street, and city;
- (5) Proposed location of the agency's branch office or branch offices by number, street, and city, and
- (6) Agency's usual business hours.

(c) No license may be issued:

- (1) In any fictitious name that may be confused with or is similar to any federal, state, county, or municipal government function or agency;
- (2) In any name that may tend to describe any business function or enterprise not actually engaged in by the applicant;
- (3) In any name that is the same as or similar to any existing licensed company and that would tend to deceive the public,
- (4) In any name that would tend to be deceptive or misleading; or
- (5) To any repossession agency applicant without that agency's location or branch office location maintaining a secured storage facility, as defined in Section 4.

(d) If the applicant for repossession agency licensure is an individual, then his or her application shall include the full residential address of the applicant.

(e) If the applicant for repossession agency licensure is a partnership, then the application shall include the names and full residential addresses of all partners. The application shall also state whether any of the partners have ever used an alias and, if so, any such aliases used.

(f) If the applicant for licensure as a repossession agency is a corporation, then the application shall include the names and full residential addresses of all corporate officers. The application shall also state whether any of the officers have ever used an alias and, if so, any such aliases used.

(g) If the applicant for licensure as a repossession agency is a limited liability company, then the application shall include the names and full residential addresses of all members of the limited liability company. The application shall also state whether any of the members have ever used an alias and, if so, any such aliases used.

(h) Each individual, partner of a partnership, officer of a corporation, or member of a limited liability company shall submit with the application a copy of one form of government issued personal identification upon which must appear a photograph taken within one (1) year immediately preceding the date of the filing of the application.

(i) No examination shall be required for licensure as a repossession agency by the department.

(j) The department may require any additional information that, in the judgment of the department, shall enable the department to determine the qualifications of the applicant for licensure.

(k) Nothing in this section precludes a domestic or foreign limited liability company being licensed as a repossession agency.

(l) A repossession agency license may be transferred upon prior notice to the department and upon completion by the transferee of all requirements relative to the application process for repossession agency licensure.

(m) Repossessions performed in this state must be performed by repossession agencies, their employees, or agents licensed by the department, with the exception of

financial institutions or the employees of a financial institution that are exempt under subsection (c) of section 7.

SECTION 9. It is an offense for any repossession agency, or an employee or agent of a repossession agency to operate in this state without a valid license or recovery permit issued by the department. The department may, at any time during the term of the license, make inquiry into the licensee's management or conduct of business to determine compliance with the provisions of this chapter or the rules adopted pursuant to this chapter. State, county, and municipal governmental entities shall assist the department in the enforcement of this chapter.

SECTION 10.

(a) All employees of a licensed repossession agency whose duties include the actual repossession of collateral must apply for a recovery permit.

(1) No person may be issued a recovery permit who meets any of the following criteria:

(A) Is younger than twenty-one (21) years of age;

(B) Has been determined by the department to be unfit by reason of conviction of an offense in this or another state, other than a minor traffic offense;

(C) Has had a license or recovery permit denied, suspended, or revoked under this chapter;

(D) Has not successfully completed the Certified Asset Recovery Specialist ("C.A.R.S.") National Certification Program or another certification program approved by the department; or

(E) Has not paid the required application fees as set by the department.

(2) No person may be employed by a repossession agency in a position the duties of which include the actual repossession of collateral until he or she has executed and furnished to the department, on forms furnished by the department, a verified statement to be known as an "Employee's Statement" setting forth all of the following:

(A) The person's full name, age, and residential address;

(B) Any business or occupation engaged in for the five (5) years immediately before the date of the execution of the statement, the place where any such business or occupation was engaged in, and the names of the person's employers, if any;

(C) That the person has not had a license or recovery permit denied, revoked, or suspended under this chapter;

(D) Any felony conviction that has been entered against the person; and

(E) Any other information as may be required by any rule of the department to show the good character, competency, and integrity of the person executing the statement.

(b) Each applicant for a recovery permit shall submit to the department two (2) sets of fingerprints, which shall be checked against the fingerprint records on file with the Tennessee bureau of investigation and the Federal bureau of investigation in the manner set forth in § 38-6-109. The cost of the criminal background check shall be included in the application fee.

(c) Qualified applicants shall purchase a recovery permit from the department. The department shall notify an applicant within ten (10) days after receipt of the applicant's application of its intent to issue or deny the recovery permit. Any person to

whom a recovery permit is issued shall carry the recovery permit at all times while actually engaged in the performance of the duties of his or her employment. No recovery permit shall be effective unless accompanied by a license issued by the department. The requirements for renewal of recovery permits shall be established by rule of the department, except that the department is not authorized to require continuing education as a requirement for renewal of a recovery permit. Possession of a recovery permit does not in any way imply that the holder of the recovery permit is employed by any agency unless the recovery permit is accompanied by the employee identification card required by subsection (e).

(d) Each employer shall maintain a record of each employee that is accessible to the duly authorized representatives of the department. The record shall contain all of the following information:

(1) A photograph taken within ten (10) days after the date that the employee begins employment with the employer. The photograph shall be replaced with a current photograph every three (3) calendar years;

(2) The employee's statements required by subdivision (a)(2);

(3) All correspondence or documents relating to the character and integrity of the employee received by the employer from any official source or law enforcement agency; and

(4) In the case of former employees, the employee identification card that was issued to such former employee under subsection (e).

(e) Every employer shall furnish an employee identification card to each of the employer's employees. This subsection (e) shall not apply to office or clerical personnel whose duties do not include the actual repossession of collateral. The employee identification card shall contain a recent photograph of the employee, the employee's

name, the name and agency license number of the employer, the employee's personal description, the signature of the employer, the signature of that employee, the date of issuance, and an employee identification card number.

(f) No employer may issue an employee identification card to any person who is not employed by the employer in accordance with this section or who falsely state or represent that a person is or has been in the employer's employ. It is an offense for an applicant for registration to file with the department the fingerprints of a person other than the applicant. An agency shall inform the department within fifteen (15) days after contracting or employing a licensed repossession agency employee of the name of the person contracted or hired.

(g) Every employer shall obtain the identification card of every employee whose employment with the employer ends. An employer shall immediately report an identification card that is lost or stolen to the local police department having jurisdiction over the repossession agency location.

(h) No agency may employ any person to perform any activity under this chapter unless the person possesses a valid license or recovery permit under this chapter.

(i) If information is discovered affecting the registration of a person whose fingerprints were submitted under this section, then the department shall so notify the agency that submitted the fingerprints on behalf of that person.

(j) A person employed under this section shall have fifteen (15) business days within which to notify the department of any change in employer, but may continue working under any other recovery permits granted as an employee or independent contractor.

(k) This section applies only to those employees of licensed repossession agencies whose duties include actual repossession of collateral.

SECTION 11.

(a)

(1) The license and permit fees required under this chapter are as follows:

(A) Class "R" license (recovery agency), eight hundred and twenty-five dollars (\$825).

(B) Class "RR" license (branch office), for the first three branch offices of a Class "R" licensee, two hundred and fifty dollars (\$250).

There shall not be a fee for licensure of the fourth and subsequent branch offices of a Class "R" licensee.

(C) Class "E" recovery permit, seventy five dollars (\$75).

(D) Class "EE" recovery permit (recovery agent intern), seventy five dollars (\$75).

(2) An agency shall submit an application to register any remote storage location or locations. A remote storage location shall not transact business with the public and shall provide evidence of applicable insurance to the department that specifies the licensed repossession agency as the primary policy holder. A remote storage location shall be located in a commercially zoned area physically located in Tennessee. The department shall develop by rule the requirements for registering remote storage locations. The fee for each registration shall not exceed three hundred dollars (\$300).

(b) The department may establish by rule a fee for the replacement or revision of a license or recovery permit.

SECTION 12. In addition to any other information required by the department to be contained in the application, every application for an initial, renewal, or restored license or

permit shall include the applicant's social security number, if an individual, or federal employer identification number, if not an individual. The department shall not disclose an individual's social security number and shall keep that social security number confidential pursuant to § 47-18-2110. The department shall not disclose an individual's residential address and shall keep that residential address confidential unless disclosure is required by law.

SECTION 13. The department shall require that each individual, partner of a partnership, officer of a corporation, or owner of a limited liability company, as part of the application process, shall authorize a criminal history records check to determine if such applicant has ever been charged with a crime and, if so, the disposition of those charges. Upon making such authorization, each individual, partner of a partnership, officer of a corporation, or owner of a limited liability company shall submit to the department two (2) sets of fingerprints, which shall be checked against the fingerprint records on file with the Tennessee bureau of investigation and the Federal bureau of investigation in the manner set forth in § 38-6-109. The cost of the criminal background check shall be included in the application fee.

SECTION 14.

(a) In the case of the death of a person who is licensed individually as a repossession agency, a member of the deceased's immediate family shall be entitled to continue operating the agency under the same license for up to one hundred and twenty (120) days following the date of death, provided that written notice is given to the department within thirty (30) days following the date of death. At the end of the one hundred and twenty (120) day period following the death of the licensee, the license shall automatically be revoked.

(b) In the case of the death or disassociation of a partner of a partnership licensed as a repossession agency, the company shall notify the department, in writing, within thirty (30) days from the death or disassociation of the partner. If the company

fails to notify the department within the thirty (30) day period, then the license shall automatically be revoked at the end of that period. If proper notice is given, then the license shall remain in force for ninety (90) days following the date of death or disassociation of the partner. At the end of the ninety (90) day period, the license shall automatically be revoked.

(c) A license extended under this section is subject to all other provisions of this chapter.

SECTION 15.

(a) An original Class "R" license or Class "RR" license shall expire two (2) years after the date of issuance.

(b) An original Class "E" recovery permit and Class "EE" recovery permit shall expire one (1) year after the date of issuance.

(c) A renewal Class "R" license and Class "RR" license shall expire two (2) years after the date of renewal.

(d) A renewal Class "E" recovery permit and Class "EE" recovery permit shall expire one (1) year after the date of renewal.

(e) The following are guidelines for the classes of licensure and registration:

(1) Any person, firm, company, partnership, or corporation that engages in business as a recovery agency shall have a Class "R" license. A Class "R" license is valid for only one (1) location.

(2) Each branch office of a Class "R" agency shall have a Class "RR" license.

(3) Any individual who performs recovery services as a repossession agency employee for a Class "R" recovery agency or a Class "RR" branch office must have a Class "E" recovery permit.

(4) Any individual who performs repossessions as an intern under the direction and control of a designated, sponsoring Class "E" recovery permittee shall have a Class "EE" recovery permit.

(5) An individual shall have a Class "E" recovery permit if he or she owns or is an employee of a Class "R" agency or Class "RR" branch office.

(6) Class "E", and Class "EE" recovery permits are not transferable.

(f) At least ninety (90) days prior to the expiration of a license or recovery permit, the department shall mail to the license or permit holder a renewal form in the form and manner prescribed by the department. The license holder or recovery permit holder shall complete and mail the renewal form to the department, pay any fines assessed, and pay any renewal fee required by the department.

(g) Any person or entity that has allowed a license or recovery permit to expire may have that license or recovery permit restored by making an application to the department within one year after the expiration of a repossession agency's license or within thirty (30) days after the expiration of a recovery permit, filing proof acceptable to the department of fitness to have the license or recovery permit restored, and paying the required restoration fee. However, any person whose license or recovery permit expired while either in federal service on active duty with the armed forces of the United States, called into service or training with the state militia, or in training or education under the supervision of the United States preliminary to induction into military service may have his or her license or recovery permit renewed or restored without paying any lapsed renewal fees, if within two years after honorable termination of the service, training, or education, except under condition other than honorable, he or she furnishes the department with satisfactory evidence to the effect that he or she has been so engaged and that the service, training, or education has been so terminated.

(h) A suspended repossession agency license or recovery permit is subject to expiration as set forth in this section. Renewal of a certificate or registration card does not entitle the license holder or recovery permit holder, while the license or recovery permit remains suspended and until it is reinstated, to engage in the licensed or permitted activity.

(i) A revoked repossession agency license or recovery permit is subject to expiration as set forth in this section; however, it may not be renewed. If a revoked license or recovery permit is reinstated after its expiration, then the license holder or recovery permit holder, as a condition of reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee in effect on the last regular renewal date prior to the date on which the license or recovery permit is reinstated and any additional delinquency fee required by the department.

(j) Any person or entity that notifies the department, in writing on forms prescribed by the department, may place a license or recovery permit on inactive status and shall be excused from the payment of renewal fees until the person or entity notifies the department in writing of the intention to resume active practice. Any person or entity requesting that a license or recovery permit be changed from inactive to active status shall be required to pay the current renewal fee.

(k) Any repossession agency license holder or recovery permit holder whose license or recovery permit is non-renewed or on inactive status shall not engage in the practice of recovery in this state or use the title or advertise that he, she, or it performs the services of a licensed repossession agency or repossession agency employee.

(l) Any person in violation of subsection (k) shall be deemed to be operating a repossession agency without a license or acting as a repossession agency employee without a recovery permit and is subject to the disciplinary provisions of this chapter.

(m) A repossession agency license or recovery permit that is not renewed within three (3) years after its expiration may not be renewed, restored, reinstated, or reissued thereafter. The holder of the license or recovery permit may obtain a new license or recovery permit only upon compliance with all of the provisions of this chapter concerning the issuance of original licenses or recovery permits.

SECTION 16.

(a) The department may refuse to issue or renew or may revoke any license or recovery permit or may suspend, place on probation, fine, or take any disciplinary action that the department may deem proper, including imposition of a fine not to exceed two thousand five hundred dollars (\$2,500) for each violation, with regard to any license holder or recovery permit holder for one or any combination of the following causes:

(1) Knowingly making any misrepresentation for the purpose of obtaining a license or recovery permit;

(2) Violations of this chapter or any rules or regulations promulgated hereunder;

(3) Conviction of any crime under the laws of the United States or any state or territory thereof that is:

(A) A felony;

(B) A misdemeanor, an essential element of which is dishonesty;

or

(C) A crime that is related to the practice of collateral recovery.

(4) Aiding or abetting another in violating any provision of this chapter or its rules;

(5) Engaging in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public as defined by rule;

(6) Violation of any court order from any state or public agency engaged in the enforcement of payment of child support arrearages or for noncompliance with certain processes relating to paternity or support proceeding;

(7) Solicitation of professional services by using false or misleading advertising;

(8) A finding that the license or recovery permit was obtained by fraudulent means; and

(9) Practicing or attempting to practice under a name other than the full name shown on the license or recovery permit or any other legally authorized name.

(b) The department may refuse to issue or may suspend the license or recovery permit of any person or entity who fails to file a return, pay the tax, penalty, or interest shown in a filed return, or pay any final assessment of tax, penalty, or interest, as required for any tax administered by the department of revenue, until the time the requirements of the tax are satisfied. The department may take into consideration any pending tax disputes properly filed with the department of revenue.

SECTION 17.

(a) When considering the denial of a license or recovery permit on the grounds of conviction of a crime, the department, in evaluating the rehabilitation of the applicant and the applicant's present eligibility for a license or recovery permit, shall consider each of the following criteria:

(1) The nature and severity of the act or crime under consideration as grounds for denial.

(2) Evidence of any act committed subsequent to the act or crime under consideration as grounds for denial, which also could be considered as grounds for disciplinary action under this chapter.

(3) The amount of time that has lapsed since the commission of the act or crime referred to in subdivisions (1) or (2) of this subsection (a).

(4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.

(5) Evidence, if any, of rehabilitation submitted by the applicant.

(b) When considering the suspension or revocation of a license or recovery permit on the grounds of conviction of a crime, the department, in evaluating the rehabilitation of the applicant and the applicant's present eligibility for a license or recovery permit, shall consider each of the following criteria:

(1) The nature and severity of the act or offense.

(2) The license holder's or recovery permit holder's criminal record in its entirety.

(3) The amount of time that has lapsed since the commission of the act or offense.

(4) Whether the license holder or recovery permit holder has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against him or her.

(5) If applicable, evidence of expungement proceedings.

(6) Evidence, if any, of rehabilitation submitted by the license holder or recovery permit holder.

SECTION 18. No repossession agency license shall be issued unless the applicant first files with the department a certification of insurance evidencing coverage in the amount required under this section. The coverage shall provide the department as an additional insured for the purpose of receiving all notices of modifications or cancellations of such insurance. Coverage shall be written by an insurance company that is lawfully engaged to provide insurance coverage in Tennessee. Coverage shall provide for a combined single limit policy in the amount of at least one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) in the aggregate, which shall include commercial general liability for wrongful repossession, garage keepers, on hook, and drive-away and shall be a direct primary policy. Coverage shall provide for a dishonesty bond policy in the amount of at least one million dollars (\$1,000,000). Coverage shall insure for the liability of all employees licensed or registered by the department while acting in the course of their employment. The agency shall notify the department immediately upon cancellation of the insurance policy, whether the cancellation was initiated by the insurance company or the insured agency. The agency's license shall automatically be suspended on the date of cancellation of the policy, unless new evidence of insurance is provided to the department prior to the effective date of cancellation.

SECTION 19. At all times, a repossession agency's license shall be conspicuously displayed at the agency location on record with the department.

SECTION 20.

(a) Nothing in this chapter shall prevent local authorities in any municipality, county, or municipality and county, by ordinance and within the exercise of the police power of the municipality or county, from requiring repossession agency license holders to register their names and file a copy of their state identification cards with the municipality, county, or municipality and county.

(b) A municipality or county, including a home rule unit, may not regulate individuals and entities engaged in the business of collateral recovery in a manner that is less stringent than the standards established under this chapter. To the extent that any regulation by a municipality or county, including a home rule unit, is less stringent than the standards established under this chapter, it is superseded by this chapter.

SECTION 21.

(a)

(1) If a motor vehicle is seized or repossessed in Tennessee, the sheriff of the county in which the seizure or repossession occurred shall be notified immediately of the action taken; provided, that if the seizure or repossession occurred in a county having a metropolitan form of government, notification shall be made to the metropolitan police department.

(2) Failure to notify as provided in this section, errors of fact in notification, or notification to an incorrect jurisdiction shall not be construed to be grounds to defeat or cancel an otherwise permissible seizure or repossession.

(b) The notice requirements of this section shall not apply if the owner voluntarily surrenders the vehicle for repossession.

SECTION 22.

(a) With regard to collateral subject to a security agreement, repossession occurs when the licensed repossession agency employee gains entry into the collateral, the collateral becomes connected to a tow vehicle, or the licensed repossession agency employee has physical control, custody, or possession of the collateral.

(b) The licensed repossession agency shall confirm with the legal owner of a recovered vehicle whether the legal owner holds a security interest in the personal effects or other property contained in or on the recovered vehicle.

(c) If personal effects or other property not covered by a security agreement are contained in or on a recovered vehicle at the time it is recovered, then the personal effects and other property not covered by a security agreement must be completely and accurately inventoried, and a record of the inventory shall be maintained on file with the licensed repossession agency for a period of two (2) years following the date of repossession. The licensed repossession agency shall hold all personal effects and other property not covered by a security agreement until the licensed repossession agency either returns the personal effects and other property to the debtor or disposes of the personal effects and other property in accordance with this section.

(d) Within five (5) working days following the date of repossession, the licensed repossession agency shall give written notification to the debtor of the whereabouts of personal effects or other property inventoried. At least forty five (45) days prior to disposing of such personal effects or other property, the licensed repossession agency shall, by United States Postal Service, notify the debtor of the intent to dispose of the property. Should the debtor, or his or her lawful designee, appear to retrieve the personal property prior to the date on which the licensed repossession agency is allowed to dispose of the property, the licensed repossession agency shall surrender the personal property to that individual upon payment of any reasonably incurred expenses for inventory and storage.

(e) If personal property is not claimed within forty five (45) days of receipt of the notice of intent to dispose, then the licensed repossession agency may dispose of the personal property at its discretion, except that illegal items or contraband shall be surrendered to a law enforcement agency, and the licensed repossession agency shall retain a receipt or other proof of surrender as part of the inventory and disposal records it maintains. The inventory of the personal property and the records regarding any

disposal of personal property shall be maintained for a period of two (2) years in the permanent records of the licensed repossession agency and shall be made available upon request to the department.

(f) Any vehicle that is recovered by a repossession agency shall be stored either on a secured storage facility or remote storage location.

SECTION 23.

(a) There is hereby created within the general fund a special account to be known as the "collateral recovery administrative fund." Notwithstanding any other law to the contrary, all moneys collected pursuant to this chapter shall be deposited in the collateral recovery administrative fund.

(b) Disbursements from the fund shall be made solely for the purpose of defraying expenses incurred in the implementation and enforcement of this chapter.

(c) No such expenses shall be payable from the general fund of the state.

(d) Any part of the collateral recovery administrative fund remaining at the end of a fiscal year shall not revert to the general fund, but shall be carried forward until expended in accordance with this chapter.

SECTION 24. All repossession activity correspondence relating to complaints and alleged violations of this chapter shall be submitted to the department in writing on forms and in a manner prescribed by the department.

SECTION 25. The department shall maintain a roster of names and addresses of all persons who hold valid licenses and recovery permits and all persons whose licenses or recovery permits have been suspended or revoked within the previous year.

SECTION 26.

(a) If any person or entity violates this chapter, then the department may petition for an order enjoining the violation or for an order enforcing compliance with this chapter.

Upon the filing of a verified petition in court, the court may issue a temporary restraining order, without notice or bond, and may preliminarily and permanently enjoin the violation. If it is established that the person or entity has violated or is violating the injunction, the court may punish the offender for contempt of court. Proceedings under this section are in addition to, and not in lieu of, all other remedies and penalties provided by this chapter.

(b) If any person or entity practices as a repossession agency or holds himself, herself, or itself out as such without having a valid license or recovery permit under this chapter, then any license holder or recovery permit holder, any person injured thereby, or any resident of or legal entity within the state may, in addition to the department, petition for relief as provided in subsection (a).

(c) Whenever, in the opinion of the department, any person or entity violates this chapter, the department may issue a rule to show cause why an order to cease and desist should not be entered against that person or entity. The rule shall clearly set forth the grounds relied upon by the department and shall provide a period of seven (7) days from the date of the rule to file an answer to the satisfaction of the department. Failure to answer to the satisfaction of the department shall cause an order to cease and desist to be issued immediately.

SECTION 27.

(a) The department may investigate the actions or qualifications of any person or entity holding or claiming to hold a license or recovery permit. The department may take any immediate disciplinary action that the department may deem proper if a person or entity repossesses a vehicle or collateral in the state without a valid license or permit. For all other disciplinary actions against a license or recovery permit holder, the department shall:

(1) Notify the accused in writing of any charges made and the time and place for a hearing on the charges at least thirty (30) days before the date set for the hearing;

(2) Direct the accused to file a written answer to the charges under oath within thirty (30) days after the service on the person or entity of such notice; and

(3) Inform the accused that failure to file an answer shall result in a default judgment against the person or entity and the person's or entity's license or recovery permit may be suspended, revoked, placed on probationary status, or other disciplinary action taken with regard to the license or recovery permit as the department may deem proper.

(b) In case the person or entity, after receiving notice, fails to file an answer, the person's or entity's license or recovery permit may, in the discretion of the department, be suspended, revoked, placed on probationary status, or the department, may take whatever disciplinary action it deems proper, including the imposition of a fine, without a hearing, if the act or acts charged constitute sufficient grounds for such action under this chapter. This written notice and any notice in the subsequent proceedings may be served by personal delivery to the accused, or by registered or certified mail to the address last specified by the accused in the last notification to the department. The written answer shall be served by personal delivery, certified delivery, or certified or registered mail to the department. At the time and place fixed in the notice, the department shall proceed to hear the charges and the parties or their counsel shall be accorded ample opportunity to present such statements, testimony, evidence, and argument as may be pertinent to the charges or to the defense thereto. The department may continue such hearing from time to time. At the discretion of the department, the

accused person's or entity's license or recovery permit may be suspended or revoked, if the evidence constitutes sufficient grounds for such action under this Act.

SECTION 28. The department, at its expense, shall preserve a record of all proceedings at the formal hearing of any case. The notice of hearing, complaint and all other documents in the nature of pleadings and written motions filed in the proceedings, the transcript of testimony, and orders of the department shall be in the record of the proceedings.

SECTION 29. The department has the power to subpoena and to bring before it any person and to take testimony either orally or by deposition, or both, with the same fees and mileage and in the same manner as is prescribed in civil cases in the courts of this State. The department and the designated hearing officer have the power to administer oaths to witnesses at any hearing that the department is authorized to conduct pursuant to this chapter. Any circuit court may, upon application of the department or its designee or of the applicant, license holder, or recovery permit holder against whom proceedings under this chapter are pending, enter an order requiring the attendance of witnesses and their testimony, and the production of documents, papers, files, books, and records in connection with any hearing or investigation. The court may compel obedience to its order by proceedings for contempt.

SECTION 30. At the conclusion of the hearing, the department shall prepare a written report of its findings and recommendations. The report shall contain a finding whether or not the accused person or entity violated this chapter or failed to comply with the conditions required in this chapter. The finding is not admissible in evidence against the person in a criminal prosecution brought for the violation of this chapter, but the hearing and findings are not a bar to a criminal prosecution brought for the violation of this chapter.

SECTION 31. In any hearing involving disciplinary action against a license holder or recovery permit holder, a copy of the department's report shall be served upon the respondent by the department, either personally or as provided in this chapter for the service of the notice of

hearing. Within twenty (20) calendar days after service, the respondent may present to the department a motion in writing for a rehearing that shall specify the particular grounds for rehearing. If no motion for rehearing is filed, then upon the expiration of the time specified for filing a motion, or if a motion for rehearing is denied, then upon denial, the department may enter an order in accordance with its own recommendations except as provided in this chapter. If the respondent orders from the reporting service, and pays for, a transcript of the record within the time for filing a motion for rehearing, then the twenty (20) calendar day period within which a motion may be filed shall commence upon the delivery of the transcript to the respondent.

SECTION 32. The department has the authority to appoint any attorney duly licensed to practice law in this state to serve as the hearing officer in any action for refusal to issue or renew a license or recovery permit or to discipline a license holder or recovery permit holder. The hearing officer has full authority to conduct the hearing. The hearing officer shall report his or her findings and recommendations to the department. The department shall have sixty (60) calendar days from receipt of the report to review the report of the hearing officer. If the department disagrees with the recommendation of the hearing officer, then the department may issue an order in contravention of the recommendation.

SECTION 33. Whenever the department is not satisfied that substantial justice has been done in revoking or suspending a license or recovery permit, or refusing to issue or renew a license or recovery permit, the department may order a rehearing.

SECTION 34. At any time after the suspension or revocation of any license or recovery permit, the department may restore the license or recovery permit to the accused person, unless after an investigation and a hearing the department determines that restoration is not in the public interest.

SECTION 35. Upon the revocation or suspension of any license or recovery permit, the license holder or recovery permit holder shall immediately surrender the license or recovery

permit to the department. If the license holder or recovery permit holder fails to do so, then the department has the right to seize the license or recovery permit.

SECTION 36. The department may summarily suspend the license of a repossession agency or the recovery permit of an employee without a hearing, simultaneously with the institution of proceedings for a hearing provided for in this chapter, if the department finds that evidence in its possession indicates that a repossession agency's or employee's continuation in the business of collateral recovery would constitute an imminent danger to the public. In the event that the department summarily suspends a license or recovery permit without a hearing, a hearing by the department must be held within thirty (30) calendar days after the suspension has occurred.

SECTION 37. All final administrative decisions of the department are subject to review pursuant to the Uniform Administrative Procedures Act, compiled at title 4, chapter 5.

SECTION 38. Any person who is found to have violated any provision of this chapter is guilty of a Class A misdemeanor for the first offense, and a Class E felony for a second or subsequent offense.

SECTION 39. Tennessee Code Annotated, Section 55-5-128, is amended by deleting the section in its entirety.

SECTION 40. Tennessee Code Annotated, Section 62-11-105(a), is amended by adding the following as a new, appropriately designated subdivision:

() A licensed repossession agency or employee of a licensed repossession agency that offers rekeying or key duplication services for automobile locks only;

SECTION 41. Tennessee Code Annotated, Title 66, Chapter 19, Part 1, is amended by adding the following as a new section:

§ 66-19-10_.

(a)

(1) Repossession agencies licensed pursuant to the provisions of sections 4 through 38 of this act shall be entitled to a lien upon all vehicles, which lawfully come into their possession and are retained in their possession until all reasonable charges due are paid. A repossession agency may, after thirty (30) days, enforce this lien in the manner prescribed for the enforcement of artisans' liens under §§ 66-14-102 — 66-14-106, except the repossession agency shall only be required to advertise the sale one (1) time in a newspaper published in the place where the sale is to be held.

(2) In addition to any other penalty provided for violation of this section, a violation of subdivision (a)(1) shall also be a violation of title 47, chapter 18, part 1, and the owner of the vehicle may seek relief under that statute.

(3) A repossession agency may not collect any storage or related fees for any period of time in which the repossession agency was in violation of subdivision (a)(1) with respect to a motor vehicle or associated equipment.

(4) The commissioner of commerce and insurance is authorized to promulgate rules and regulations to effectuate the purposes of this subsection (a) in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(b) No person, firm, or entity shall have a right to a lien on any vehicle that has been recovered without authorization of the lienholder of the vehicle or where the vehicle has been recovered in violation of any provisions of Sections 4 through 38 of this act.

SECTION 42. This act shall take effect upon becoming a law for purposes of promulgating rules and regulations and on January 1, 2014, for all other purposes, the public welfare requiring it.